

**SUPREME COURT OF NEW YORK  
ERIE COUNTY**

---

The Continental Insurance Company, )  
Plaintiff ) INDEX NO. \_\_\_\_\_  
v. )  
The Diocese of Buffalo, ) Date Index No. Purchased:  
Defendant. ) October 3, 2019  
)  
)

---

**TO THE ABOVE-NAMED DEFENDANT**

**YOU ARE HEREBY SUMMONED** to answer the Complaint in this action and to serve a copy of your Answer upon Plaintiff's attorney at the address stated below within twenty (20) days after the personal service of this Summons, exclusive of the day of service, (or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates Erie County as the place of trial. The basis of venue is the location of Defendant's residences, Defendant's operations, as well as Defendant's headquarters located at 795 Main Street, Buffalo, NY 14203.

Respectfully submitted,

THE CONTINENTAL INSURANCE  
COMPANY

By its counsel,

Date: October 3, 2019

/s/ Alan E. Schoenfeld

Alan E. Schoenfeld (N.Y. Bar No. 4500898)  
Alan.Schoenfeld@wilmerhale.com  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Tel.: (212) 937-7294  
Fax.: (212) 230-8888

David A. Attisani (N.Y. Bar No. 4941423)  
dattisani@choate.com  
J.P. Jaillet (*pro hac vice* forthcoming)  
jjaillet@choate.com  
Kevin J. Finnerty (*pro hac vice* forthcoming)  
kfinnerty@choate.com  
CHOATE, HALL & STEWART LLP  
Two International Place  
Boston, MA 02110  
Tel.: (617) 248-5000  
Fax: (617) 248-4000

**SUPREME COURT OF NEW YORK  
ERIE COUNTY**

---

The Continental Insurance Company, )  
Plaintiff ) INDEX NO. \_\_\_\_\_  
v. )  
The Diocese of Buffalo, )  
Defendant. )  
\_\_\_\_\_  
)

**COMPLAINT**

Plaintiff The Continental Insurance Company, successor by merger to Commercial Insurance Company of Newark, New Jersey (“Continental”), brings this Complaint for declaratory judgment against Defendant, The Diocese of Buffalo (the “Diocese”).

**The Parties**

1. Commercial Insurance Company of Newark, New Jersey (“Commercial Insurance”) was an underwriting company that was merged into Continental. Continental is a corporation organized and existing under the laws of the state of Pennsylvania, with its principal place of business located in Chicago, Illinois.

2. Upon information and belief, Defendant Diocese of Buffalo is a Roman Catholic diocese established and headquartered in Buffalo, New York, with its principal office located at 795 Main Street Buffalo, New York 14203.

**Jurisdiction and Venue**

3. The Court has jurisdiction pursuant to C.P.L.R. § 301, because the Diocese’s principal place of business is located in New York.

4. Venue is proper pursuant to C.P.L.R. § 503, because the Diocese's principal place of business is located in Erie County.

### **The Alleged Insurance Policies**

5. In correspondence to Continental, the Diocese has asserted that Commercial Insurance issued to the Diocese three insurance policies, effective: July 1, 1973–July 1, 1976; July 1, 1976–July 1, 1977; and July 1, 1977–July 1, 1978 (the “Alleged Policies”).

6. Neither the Diocese nor Continental has located copies of the Alleged Policies. Accordingly, it is unclear whether Commercial Insurance issued the Alleged Policies.

7. The Diocese has, however, provided Continental with secondary evidence indicating that Continental may have issued to the Diocese certain commercial general liability insurance policies.

8. Information currently available to Continental indicates that Continental may have issued Comprehensive Business Policy No. VBP-69564-01 to the Diocese, which was effective from July 1, 1973 to July 1, 1976 (the “1973 Policy”).

9. Information currently available to Continental indicates that Continental may have issued Comprehensive Business Policy No. VBP-69564-13 to the Diocese, which was effective from July 1, 1977 to July 1, 1978 (the “1977 Policy”). The putative 1973 and the 1977 Policies are referenced, together, as the “Policies”.

10. Information currently available to Continental indicates that, to the extent Continental issued the Policies or the Alleged Policies, they contain the following wording:

The Company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies, caused by an occurrence, and the Company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may

make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment or judgments or settlements.

11. Information currently available to Continental indicates that, to the extent Continental issued the Policies or the Alleged Policies, they define "occurrence" as "an accident", which results in bodily injury or property damage "neither expected nor intended from the standpoint of the insured."

12. Information currently available to Continental indicates that, to the extent Continental issued the Policies or the Alleged Policies, they require that, in "the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the Company or any of its authorized agents as soon as practicable."

13. Information currently available to Continental indicates that, to the extent Continental issued the Policies or the Alleged Policies, each Policy or Alleged Policy states: "The entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto."

14. Information currently available to Continental indicates that, to the extent Continental issued the Policies or the Alleged Policies, each Policy or Alleged Policy states: "The insured shall cooperate with the Company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury

or damage with respect to which insurance is afforded under this policy, and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the accident."

15. To the extent that Continental issued the Policies or the Alleged Policies, they may contain other terms, conditions, and/or exclusions germane to whether certain claims are covered under the Policies or Alleged Policies.

### **The Lawsuits And Claims**

16. In January 2019, the New York State Legislature passed a bill, which was signed by the New York State Governor in February 2019, which is commonly called, the "Child Victims Act" (the "CVA"). The CVA reopens statutes of limitations with respect to certain claims interposed by alleged child victims of sexual abuse. The CVA's one-year "window" to bring otherwise expired claims opened on August 14, 2019.

17. According to press reports, since August 14, 2019, plaintiffs have filed more than 165 lawsuits relating to alleged sexual abuse against the Diocese (the "Lawsuits").

18. The Diocese has provided notice to -- and seeks insurance coverage from -- Continental with respect to some of the Lawsuits.

19. Certain of the Lawsuits allege that the Diocese engaged in intentional bad acts with respect to alleged sexual abuse. For example:

- "The abuse sustained by, Plaintiff, KS-Doe-4 was reported to supervisory members of the St. Josaphat's R.C. Church. Notwithstanding said reporting, no action was taken." *KS-DOE-1 et al. v. The Diocese of Buffalo, N.Y.*, (Erie County) filed August 14, 2019.

- “The Diocese of Buffalo falls within the meaning of 18 U.S.C. Section 1961(4) and consists of ‘persons’ associated together for the common purpose of: (i) harassing, threatening, extorting, and misleading victims’ of sexual abuse committed by priests; and misleading the priests’ victims and the media to prevent the reporting, disclosure or prosecution of the priests’ sexual misconduct, and (ii) destroying, mutilating, or concealing records, documents or other evidence to prevent the use of such evidence to report or prosecute their sexual crimes.” *KS-DOE-1 et al. v. The Diocese of Buffalo, N.Y.*, (Erie County) filed August 14, 2019.
- “Upon information and belief, not only was Defendant Diocese aware of sexual abuse of children, but it participated in covering up such heinous acts by moving errant priests and clergy members from assignment to assignment, thereby putting children in harm’s way.” *PB-1 Doe v. The Diocese of Buffalo et al.*, (Erie County) filed August 14, 2019.
- “Plaintiff informed the principal of St. Francis, Father Nelson, on two separate occasions when the abuse began. Neither Father Nelson nor any other agent, servant or employee of the Diocese, Oblates, or St. Francis took any action to stop Barkenquest from sexually abusing plaintiff.” *Sciolino v. Diocese of Buffalo et al.*, (Erie County) filed August 14, 2019.

20. Certain of the Lawsuits allege that the Diocese may have known before the subject abuse took place that certain priests had: (i) engaged in prior sexual abuse of children; (ii) posed dangers to children; and (iii) a propensity to commit sexual abuse. *See, e.g., AB 45 Doe v. The Diocese of Buffalo, et al.* (Erie County, Index No. 810184/2019) filed August 14, 2019.

21. The Diocese has also provided notice to Continental of other claims or potential claims involving alleged sexual abuse that do not involve any lawsuit (the “Claims”).

22. The Diocese has provided notice to and seeks insurance coverage from Continental with respect to the Claims.

23. Continental has reserved all rights with respect to the Lawsuits and Claims, including the right to deny coverage based on the absence of any “accident” giving rise to coverage under the Policies or the Alleged Policies.

24. According to press reports, the Diocese has been accused of a decades-long pattern of covering up allegations of abuse and surreptitiously moving priests and other employees who had been accused of abuse to other parishes in order to avoid scrutiny.

25. In connection with several of the Lawsuits and Claims, the Diocese became aware of the allegations of the subject abuse months or years ago, but first notified Continental of such allegations subsequent to the August 14, 2019 opening of the CVA “window”.

26. In addition, through its Independent Reconciliation and Compensation Program, the Diocese has voluntarily paid settlements to certain claimants, without first providing notice to Continental or obtaining Continental’s consent.

### **Actual Controversy**

27. An actual controversy exists between Continental and the Diocese concerning the question whether Continental has any obligation to provide any form of insurance coverage to the Diocese with the respect to the Lawsuits or Claims.

28. Under the Policies or the Alleged Policies, to the extent they exist, Continental has no obligation to provide insurance coverage to the Diocese for any liability that was not caused by an “accident”.

29. Under the Policies or the Alleged Policies, to the extent they exist, Continental has no obligation to provide insurance coverage to the Diocese for any liability to the extent that bodily injury was expected or intended from the standpoint of the Diocese.

30. Continental has no obligation to provide insurance coverage to the Diocese with respect to any sexual abuse claim, to the extent that the Diocese knew prior to the abuse that the relevant priest had: (i) engaged in earlier sexual abuse; (ii) posed a danger to children; or (iii) a propensity to commit sexual abuse.

31. Continental has no obligation to provide insurance coverage to the Diocese with respect to any sexual abuse claim, to the extent that -- prior to the subject abuse -- the Diocese had created a system of protecting, transferring, and obscuring the identities of pedophilic priests.

32. Continental has no obligation to provide insurance coverage to the Diocese with respect to any sexual abuse claim, to the extent that -- prior to the subject abuse -- the Diocese knew that there was a specific risk that children interacting with priests in the Diocese would be in danger of sexual abuse.

33. Continental has no obligation to provide insurance coverage to the Diocese with respect to any sexual abuse claim, to the extent that the Diocese failed to provide timely notice to Continental of the reasonable possibility of such claim, notwithstanding the recent passage of the CVA.

34. Continental has no obligation to provide insurance coverage to the Diocese with respect to any sexual abuse claim, to the extent that -- without obtaining Continental's consent -- the Diocese voluntarily paid any form of compensation with respect to such claim.

35. Continental has no obligation to provide insurance coverage to the Diocese with respect to any sexual abuse claim, to the extent that the Diocese was aware of such claim prior to the Diocese's submission of its Policy applications to Continental.

#### **COUNT I: Declaratory Judgment – No Obligation To Defend The Diocese**

36. Continental repeats and hereby incorporates the allegations contained in Paragraphs 1 through 35 above.

37. The Policies or the Alleged Policies, to the extent they exist, do not obligate Continental to provide insurance coverage to the Diocese with respect to Lawsuits and Claims, to

the extent that liability was not caused by an “an accident”, which resulted in bodily injury “neither expected or intended from the standpoint” of the Diocese.

38. The Court should declare that -- with respect to certain Lawsuits and Claims involving liability not caused by an “an accident”, which resulted in bodily injury “neither expected nor intended from the standpoint” of the Diocese -- Continental is not required to defend the Diocese.

39. The Policies or the Alleged Policies, to the extent they exist, do not obligate Continental to provide insurance coverage to the Diocese with respect to Lawsuits and Claims, to the extent that the Diocese did not provide to Continental timely notice of the reasonable possibility of such claims.

40. The Court should declare that -- in connection with certain Lawsuits and Claims, with respect to which the Diocese did not provide timely notice -- Continental is not required to defend the Diocese.

41. The Policies or the Alleged Policies, to the extent they exist, do not obligate Continental to provide insurance coverage to the Diocese with respect to Lawsuits and Claims, to the extent that the Diocese issued voluntary payments in connection with such Lawsuits and Claims.

42. The Court should declare that -- in connection with certain Lawsuits and Claims with respect to which the Diocese issued voluntary payments -- Continental is not required to defend the Diocese.

43. The Court should declare that, to the extent Continental is not required to defend the Diocese with respect to any Lawsuit or Claim, Continental is entitled to recoupment of any costs expended by Continental in connection with the defense of such Lawsuit or Claim.

44. This dispute constitutes an actual ripe and justiciable controversy between the parties, and Continental is entitled to a declaration in its favor.

**COUNT II: Declaratory Judgment – No Obligation To Indemnify The Diocese**

45. Continental repeats and hereby incorporates the allegations contained in Paragraphs 1 through 44 above.

46. The Policies or the Alleged Policies, to the extent they exist, do not obligate Continental to provide insurance coverage to the Diocese with respect to Lawsuits and Claims, to the extent that liability was not caused by an “an accident”, which resulted in bodily injury “neither expected nor intended from the standpoint” of the Diocese.

47. The Court should declare that -- with respect to certain Lawsuits and Claims involving liability not caused by an “an accident”, which resulted in bodily injury “neither expected nor intended from the standpoint” of the Diocese -- Continental is not required to indemnify the Diocese.

48. The Policies or the Alleged Policies, to the extent they exist, do not obligate Continental to provide insurance coverage to the Diocese with respect to Lawsuits and Claims, to the extent that the Diocese did not provide timely notice to Continental of the possibility of such claims.

49. The Court should declare that -- in connection with certain Lawsuits and Claims with respect to which Continental did not receive timely notice of the alleged abuse -- Continental is not required to indemnify the Diocese.

50. The Policies or the Alleged Policies, to the extent they exist, do not obligate Continental to provide insurance coverage to the Diocese with respect to Lawsuits and Claims, to

the extent that the Diocese issued voluntary payments in connection with such Lawsuits and Claims.

51. The Court should declare that -- in connection with certain Lawsuits and Claims with respect to which the Diocese issued voluntary payments -- Continental is not required to indemnify the Diocese.

52. This dispute constitutes an actual ripe and justiciable controversy between the parties, and Continental is entitled to a declaration in their favor.

**COUNT III – Declaratory Judgment – Other Coverage Issues**  
**To The Extent The Court Finds A Duty To Defend**

53. Continental repeats and hereby incorporates the allegations contained in Paragraphs 1 through 52 above.

54. To the extent the Court concludes that Continental has a duty to defend the Diocese with respect to any Lawsuit or Claim, Continental seeks a declaration regarding other issues that may affect Continental's obligations under the Policies or Alleged Policies in connection with the relevant Lawsuit or Claim, including, among other issues: whether coverage is triggered under the Policies or Alleged Policies; the number of occurrences covered under the Policies or Alleged Policies; and, the correct method of allocation of indemnity and/or expense with respect to the Policies or Alleged Policies.

55. This dispute constitutes an actual ripe and justiciable controversy between the parties, and Continental is entitled to a declaration in their favor.

**COUNT IV – Declaratory Judgment – Other Coverage Issues**  
**To The Extent The Court Finds A Duty To Indemnify**

56. Continental repeats and hereby incorporates the allegations contained in Paragraphs 1 through 55 above.

57. To the extent the Court concludes that Continental has a duty to indemnify the Diocese with respect to any Lawsuit or Claim, Continental seeks a declaration regarding other issues that may affect Continental's obligations under the Policies or Alleged Policies in connection with the relevant Lawsuit or Claim, including, among other issues: whether coverage is triggered under the Policies or Alleged Policies; the number of occurrences covered under the Policies or Alleged Policies; and, the correct method of allocation of indemnity and/or expense with respect to the Policies or Alleged Policies.

58. This dispute constitutes an actual ripe and justiciable controversy between the parties, and Continental is entitled to a declaration in their favor.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Continental respectfully requests that the Court enter a judgment in its favor declaring that: (1) with respect to certain Lawsuits and Claims involving liability not caused by an "an accident", which resulted in bodily injury "neither expected or intended from the standpoint" of the Diocese -- Continental is not required defend or indemnify the Diocese; (2) in connection with certain Lawsuits and Claims with respect to which Continental did not receive timely notice of the alleged abuse, Continental is not required to defend or indemnify the Diocese; (3) in connection with certain Lawsuits and Claims with respect to which the Diocese issued voluntary payments, Continental is not required to defend or indemnify the Diocese. And, to the extent the Court concludes that Continental has a duty to defend or indemnify the Diocese with respect to any Lawsuit or Claim, Continental seeks a declaration concerning other potentially pertinent issues related to possible coverage. Continental further requests that the Court grant such other and further relief as may be just and appropriate in the circumstances.

Respectfully submitted,

THE CONTINENTAL INSURANCE  
COMPANY

By its counsel,

Date: October 3, 2019

/s/ Alan E. Schoenfeld

Alan E. Schoenfeld (N.Y. Bar No. 4500898)  
Alan.Schoenfeld@wilmerhale.com  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Tel.: (212) 937-7294  
Fax.: (212) 230-8888

David A. Attisani (N.Y. Bar No. 4941423)  
dattisani@choate.com  
J.P. Jaillet (*pro hac vice* forthcoming)  
jjaillet@choate.com  
Kevin J. Finnerty (*pro hac vice* forthcoming)  
kfinnerty@choate.com  
CHOATE, HALL & STEWART LLP  
Two International Place  
Boston, MA 02110  
Tel.: (617) 248-5000  
Fax: (617) 248-4000